



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CRITICAL NOTICES.

THREE NEW BOOKS ON THE CODE OF HAMMURABI,
OR BABYLONIAN LAW.

Hammurabi's Gesetz. By Professor J. KOHLER and Dr. F. E. PEISER.
Band I.: *Übersetzung, Juristische Wiedergabe, Erläuterung.*
E. Pfeiffer, Leipzig.

Die Gesetze Hammurabis und die mosaische Gesetzgebung. Von Hofrat
Prof. Dr. D. H. MÜLLER. Published in *X. Jahresbericht der
Israelitisch-Theologischen Lehranstalt in Wien für das Schuljahr
1902-1903.*

The Laws of Moses, and the Code of Hammurabi. By S. A. COOK, M.A.,
London. A. & C. Black.

I. WE have long looked forward to the appearance of the promised work on the Code of Hammurabi, by Professor J. Kohler and Dr. F. E. Peiser. The former, Professor of Comparative Jurisprudence in Berlin, and the latter, well known by his editions of Babylonian contract tablets, have worked together before with happy results. Their *Aus dem babylonischen Rechtsleben* has long been a standard work on the results to be obtained from a study of Babylonian contracts. We expected great advances on all previous editions, as the wealth of comparative matter which Dr. Kohler can command, and the intimate acquaintance with actual legal business as carried on in Babylonia, already shown by Dr. Peiser, bade fair to render their work not only indispensable but practically unapproachable.

This is the first of three parts; the second is to consist of the Babylonian matter, a transcription of the text, the grammar, lexicography and philology; the third is to be a selection of the contemporary documents illustrating the code. It is rather a pity that so little of the results which must surely be reached by such an investigation should be allowed to appear here. The authors acknowledge the amount of assistance they have received, and especially Professor F. Delitzsch's important suggestions, many of which are

given in the foot-notes. The authors refer to Winckler's and Scheil's translations, but do not appear to have seen the present writer's, "The Oldest Code of Laws in the World." It is all the more gratifying to observe how often, particularly when they acknowledge Delitzsch's assistance, the authors agree with that version.

Thus: *rabiānu*, extremely common in contemporary documents, about whose general meaning there could be no doubt whatever, was rendered by Scheil *les environs*, left untranslated by Winckler in his first edition, rendered *Häupling* in his third; my "governor," is now on Delitzsch's authority *Ortsvorsteher*. To the word *numat* they attach the note *unbekannt*. Scheil, they say, *vermutet le bien, also das Vermögen*. They further speculate on a special meaning for it, like *Harem*; but a neighbour assisting at a fire was hardly likely to make off with the Harem of the victim. Winckler's *Eigenthum*, my "property," are abundantly borne out by the contemporary documents. The guess that the signs, read by them elsewhere *ŠAL-DIŠ*, in § 40, were written for *aššu, wenn*, was pardonable to Scheil as a first attempt; but one hardly expected to see it repeated. For *ilku ahum*, Scheil's *obligation étrangère*, Winckler's *andern Staatsbeamten*, my "sojourner," they give *ein fremder Losteilhaber*. In § 41 for *ubih*, which Scheil rendered *à enclos*, Winckler *einzáunt*, my "bartered," they have *eintauscht*. For *niplatim*, Scheil's *piquets*, Winckler's *Pfeile*, my "exchanges," they give, on Delitzsch's authority, *Gegenwart*. For § 155 the special meaning of *kazù*, commonly "to bind," which they desiderate, is probably "to strangle." In § 183 both Scheil and Winckler regard the girl as the daughter of a concubine. In § 256, for *bihazu*, Scheil's *son préfet*, Winckler's *seine Gemeinde (Gau)*, my "his compensation," they give *seine Auflösung*.

There are numerous other deviations from former renderings, some of which seem improvements, others are distinct failures. The best of the former, perhaps, is the suggestion that in §§ 234, 235 *piḥu* really means "to pitch," originally "close." Here, then, the builder is said to "caulk" a vessel, in the sense of completing its construction. This is better than to suppose that the boat-builders also navigated the vessel. But is it necessary to suppose that *šibru* must mean "work"? In § 46, the suggestion that *apšitu*, if not an error, is feminine of *abšinu*, and means "yield," is very pleasing. Also the fault of the brander in §§ 226, 227, is made to be that he has cut out, or otherwise rendered unrecognizable, the brand, or tattooed mark of a slave. This seems to be an improved rendering. As to the faults no doubt there will be others only too pleased to find them. For the ordinary reader it is well to compare the renderings of other scholars. It is only in very obscure places that differences appear.

A further study of the contemporary documents which so richly illustrate the Code will clear up many passages, and for this we may confidently await the remaining parts of this work.

The translation of the Code is followed by a most useful presentation of its enactments in a modern juristic fashion. It is here that Prof. Kohler is most at home, and his views are most suggestive. Not a little of it will be disputed, and, with better understanding of the original, doubtless rejected; but it is precisely this sort of treatment that leads to further knowledge. Sometimes one wonders that the meaning he gives did not suggest a revision of the translation.

The very difficult prologue and epilogue of the Code are given in a fresh version with several improvements. Then comes a most important digest of the Code, with a careful sketch of the results for the history of civilization and law. Here also are many things disputable, but a great stride has been taken towards finality. An excellent excursus on the so-called Sumerian Family Laws establishes their relative antiquity. Then comes a thorough estimate of the place of the Code in comparative law, and some useful notes on the topography and theology of the inscription. Throughout are many valuable side-glances at the Mosaic Laws. A few additional notes from Dr. Daiches' *Altbabylonische Urkunden* close this invaluable work. It must long remain indispensable for students of law, as well as Biblical scholars.

II. Prof. Dr. D. H. Müller, so celebrated for his studies in the ancient South Arabian Inscriptions, has added another high achievement to his fame. He gives us the fruit of long study and thought upon the Code of Laws promulgated by Hammurabi. In three parallel columns he presents the transcribed Babylonian text, a beautiful Hebrew translation, and an independent German version. In his preface he sets out the names of the most helpful of the many publications which go to form the bibliography and he has made excellent use of them. It was in order to see how far a comparison with Mosaic legislation is really possible that he was led to the happy idea of giving a Hebrew version. It enables not only the substance of a law but also its formal aspect to be taken into consideration. Thus, not only the idea but the expression of it in the two laws can be compared at a glance. By placing the two legislations side by side, grouped so as to show the enactments on similarly treated subjects, Dr. Müller finds "the closest connexion of the two laws absolutely certain," and hence deduces the immediate, or mediate, dependence of the Mosaic Code on that of Hammurabi. But not in the sense that the latter was the actual source of the former. He postulates an already fixed primitive code from which both are descended.

He is further disposed to see an ancient Semitic influence in the Roman XII Tables ; and certainly shows some most remarkable resemblances. In his appendix he further examines the relations of the Syrian Code published by Bruns and Sachau.

Some of the explanations of the laws here given are undoubtedly very well worth considering, even when not altogether convincing. The explanation of § 58, that "when the sheep had entered the common sheepfold at the city gate" really means "at night" is very clever, and leads to an interesting comparison with the XII Tables. But the words of the Code are not clear, and may mean "when the stalk of the corn is fully in ear." The damage done to green corn by sheep is not irremediable, whether by day or night, and need not lead to great loss; on the contrary, feeding off by sheep is recommended as a treatment for wheat on light land, such as Babylonian soil would be. But, when a crop was in ear, to turn in sheep would mean utter loss. The explanation of *lēit* by "cheek" after the Talmudic *lō'a*, is also very welcome. In numerous other passages the right meaning has doubtless been deduced, where former translators have missed it. But it would be unfair to single out the gems and so render the book less attractive to the reader.

Most useful to Biblical students will be the comparative tables, where Mosaic and Roman legislation are compared. These show many more startling likenesses than have been pointed out and make it very improbable that the Mosaic Code was drawn up without, at least, knowledge of a Code which lies at the base of Hammurabi's Code. Dr. Müller does not take account of the sources of the Pentateuch in a way that would please a critic ; and we may expect the Higher Critics to be as merciless to him as to Prof. Delitzsch. He will probably bear it with the same equanimity, for the future is with the comparative method.

Some slight criticisms may be allowed. The Code sets down penalties for default or damage at "so many *GUR per GAN*." Here a *GUR* is a measure of capacity and a *GAN* a measure of surface area. As Schiel rendered the Code, following Oppert's views, the penalty is expressed in "so many *GUR per 10 GAN*." Dr. Müller, like Winckler, Kohler, and others, does the same. But, in fact, both the measures of capacity and area have this peculiarity, that the ordinary numerals when used with them have not their ordinary values. Reissner showed in the *Sitzungsberichte der Berliner Akademie*, 1896, p. 417 f., that the sign used to denote 10 in the ordinary enumerations meant 1 when used before *GAN*. The very numerous calculations of the scribes found in tablets both before and during the First Dynasty of Babylon amply sustain this view. It would surely

be very odd to express a penalty as "20 bushels per 10 acres": why not "2 bushels per acre"? Here Dr. Müller is of course less to blame than the proposed Assyriologists whom he follows, but the present writer's translation should have warned him.

In § 40, I do not make the reading *aṣṣatu*, but *ētu*, and that is the reading of the sign on the monument wherever it occurs. The *ilqu* I take to be a by-form of *liqū*, "a foundling," or homeless person; here, with the epithet "foreign," "a sojourner." As to the *ubil* in § 41, it is the common form in the contracts for "he has exchanged"; and, even if we did not know that *pēlu* meant to "exchange," see Meissner's *Altbabylonisches Privatrecht*, p. 130, we should expect *niplatim* to mean "exchanges."

This work is shortly to be published by A. Hölder of Vienna, with some important additions, a series of grammatical excursuses which will be valuable for the student of the language and appendices on the fragments of the Code preserved in the Library of Ašurbānīpal, the old Sumerian Family Laws, and the Syrian law-books of the fifth century, published by Bruns and Sachau. We see no promise of an Index, but sincerely hope there will be a good one. The work is of first rank and most important for comparative study of early legislations.

III. The Code of Hammurabi was certain to attract a large amount of attention abroad. Beside the original edition by Scheil in the fourth volume of the *Mémoires de la Délégation en Perse*, and the numerous editions or translations in Germany, America, and Italy, we are glad now to welcome a contribution to the subject from the able pen of Mr. S. A. Cook, so well known as a member of the editorial staff of the *Encyclopaedia Biblica*. It provides a full account of the contents of the Code, and an exhaustive comparison of this with the Mosaic Codes, from the point of view of an advanced critic. On the whole, the author is favourable to the view that the Israelite law was not dependent upon the law of Hammurabi, but far more primitive in type. The book is excellently arranged throughout and references are given for every opinion that can be traced to its source. It is a complete *résumé* of all that had appeared up to the date of publication and affords the most convenient textbook for any one who wishes now to start upon the study. A good plan would be to start with Cook and go on with Müller, and finish with Kohler, referring to the previous publications to fill up what is lacking or obscure in either. It need hardly be pointed out that all speculations as to the sense of certain laws must ultimately be tested by the actual documents embodying the practice of the times. This has been well done by Cook, but Dr. Müller has not made use of much

material that exists. A great deal more remains to be done and only needs the ability to read the innumerable published and unpublished contracts of the period.

Finality in the questions discussed by these scholars is not likely to be reached yet, but all these books are able contributions towards it, and the raising of a question is the necessary preliminary to its solution. Some small criticisms on Mr. Cook's book will perhaps be helpful for a second edition. On p. 56, note 1, he attaches rather too much importance to the sexagesimal system as dominant in Babylonia, the decimal system co-existed from early times. The military unit was fifty *couples* and was a territorial quota; see Lehmann in Meissner's *Beiträge zum altbabylonischen Privatrecht*, p. 98 f. and *Assyrian Deeds and Documents*, Vol. II, pp. 83, 225. On p. 66 the force of *itēni* is not passive, the judge altered for himself his judgement; this he is forbidden to do. An appeal is allowed, but not a re-trial or reversal of verdict. On p. 149 we meet the statement—"there are many indications, which considered in the light of comparative custom, go to prove that Babylonia legalized and sanctified immoral practices, which in the rest of the Semitic world higher ideals gradually endeavoured to suppress." This is a sort of remark that is common in German and French works. If it is meant that Babylonia was no better than other nations in this respect, and that "comparative custom" makes us certain that such practices existed, no one can demur. But what is wanted is documentary evidence, and either from shame or ignorance, that is what the writers of these remarks forbear to give. The section (§ 256) treated on p. 174 is peculiarly obscure. The signification of the form IV. 3, *imtanassuru*(*šu*) is often, and properly passive, but sometimes comes, as indicated here by the suffix *šu*, to be used with active force. The verb *mašāru*, "to lead, guide, &c.," does not seem to give sense here. Others translate so as to make the defaulter be "left on the field," among the cattle; or "expelled from" the field, or village, from the cattle. This form is not otherwise known for this verb, and it is really difficult to see what meaning it could have here. But there is another *mašāru*, "to tear in pieces," can it be that the penalty here, for a very bad case of breach of trust, is to be "torn in pieces" by the cattle on the field itself? The usual meaning of *ina* in the Code is "from," and I formerly took the verb to mean "they shall separate him from the field and from the cattle," but unfortunately I wrote "remove the oxen from that field." That does not seem an appropriate penalty, nor does it seem enough to leave the man on the field with the cattle, even if that is equivalent to making him a slave. For he would then be doing little more than he was bound

to do before. Besides, it is doubtful if "on" will do as a rendering for *ina*; or "with" either. The meaning "by" is common, "with" also in the sense of instrument.

On p. 235, the obscure *nbz* may be for *nikazu* the usual Babylonian for "account," if the Aramaic *b* can be read *k*.

On p. 246, the note from Dumon is not to be taken quite seriously. Why the medical prescriptions of the Babylonian doctors are to be styled "nostrums," as long as we do not know what they were, is not very clear; but at any rate Ea was a god, not a "patroness," and the identification with a serpent-headed god is wrong. Except as a gibe at the medical profession, there is no connexion of Allatu with doctors; and the gibe is modern.

But these are all mere trifles in comparison with the immense amount of useful and well-digested information. The chief value lies in the comparative method applied so well and in the allowance made for critical results. The text of the Code is not perfect. It had to be cut on stone, from a copy on clay, and either scribe or stone-cutter made mistakes, which can be pointed out readily enough. The obscurities may be due in part to mistakes. In other cases, we may have words or ideograms which are to be taken differently. Early translators failed to recognize the ideogram for *muškēnu* and so had to guess at its meaning. The puzzling word *aldam*, which, from its elements as an ideogram I guessed might mean "tools," or "implements"; others have guessed meant "seed," because they thought that suited the context better. They were probably right, as the word occurs in contracts with *še*, the word for "corn," before it. But we do not yet know whether it was wheat, barley, or other grain.

C. H. W. JOHNS.

M. KLUMEL'S "MISCHPÂTIM"; F. KAUFFMANN'S אָבִיב.

Mischpâtim. Ein samaritanisch-arabischer Commentar zu Ex. 21-22, 15, von IBRÂHÎM IBN JAKÛB. Nach einer Berliner Handschrift herausgegeben und mit einer Einleitung und Anmerkungen versehen. Inaugural-Dissertation von MEIER KLUMEL. Berlin, 1902, in-8°. 13+(1) SS. + xxxiv SS. arab. Text.

فِي رُوُس الشَّهْوَرِ وَالْأَبْيَابِ. Traktat über die Neulichtbeobachtung und den Jahresbeginn bei den Karäern, von SAMUEL B. MOSES. Nach einer arabischen Handschrift mit dem Fragmenten einer hebräischen Übersetzung kritisch herausgegeben und ins Deutsche übertragen von FELIX KAUFFMANN. Frankfurt a. M., 1903, in-8°. xviii + 31 SS. + 26* SS. arab.-hebr. Text.